

REMARKS

The Final Rejection of January 29, 2004 has been reviewed and its contents carefully noted. Reconsideration of this case, as amended, is respectfully requested. Applicants thank the Examiner for her thorough and detailed remarks attached to the Final Rejection and the entrance of Applicant's previously filed submission. Claims 5-6, 8-10, 12-14, 21-25 and 27-30 are currently pending. No claims are amended herein. Claims 19-20, 26 and 31-36 are canceled herein without prejudice. No claims have been added herein. It should be noted that claim 19 was rejected as proceeding with regard to non-elected matter, substantively creating a Restriction Requirement for this claim and those claims reciting "third binding moiety." Therefore it is Applicants understanding that the claims 19-20 and 26 are under Restriction due to this recitation. Clarification is requested, and Applicant reserves the right to re-assert those claims in a separate filing. Claims 31-36 were cancelled pursuant to the Examiner's rejection based on new matter. Clarification is requested, and Applicant reserves the right to assert those claims in a separate filing.

New Matter Objection

The Examiner objected to several of the previously pending claims 20, 26 and 31-36 under 35 USC § 112 as containing subject matter which was not "described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor, at the time of the invention, had possession of the claimed invention" (Final Rejection of January 29, 2004). It is apparent that the Examiner's objection was to what the Examiner has termed a lack of "literal support" for such language in the specification. To address these concerns, and in compliance with MPEP § 608.04, Applicant has made the amendments required by Examiner to the claims to more plainly reflect the meaning of the specification and that the new matter rejections can be dealt with separately in other filings. Thus, the amendments made put the remaining pending claims as a whole in better condition for allowance with respect to this point.

It remains Applicants firm belief that the claims as provided are fully supported by specification generally with substantial literal support to its plain meaning at specific locations within the four corners of the specification. In addition, the Examiner is also respectfully

reminded that the Applicants are allowed “to be..[their][sic] own lexicographer,” and that if this verbal license leads to any ambiguity the claims are to be construed “in connection with the other parts of the...patent application.” Autogiro Co. of America v. United States, 384 F.2d 391 (Ct. Cl. 1967).

Given these amendments, and the citations for direct support of them as derived from the specification as filed, Applicant respectfully requests that the objection to the claims on the grounds of “new matter” be withdrawn. MPEP § 2163.06.

Respectfully, should the Examiner maintain her objection Applicants retain their right to appeal or petition this decision to the Board of Patent Appeals and Interference’s. Reconsideration and withdrawal of these rejections is respectfully requested.

Amendments After Final Rejection

This response to the Examiners Final Rejection includes within it cancellation of several claims. Amendments such as these can be included within a response to such a Final Rejection if such amendments are made for good and sufficient reasons, as laid out by CFR § 1.116. Justifications for such amendments include: 1) the Applicant’s attempt to answer new issues or rejections raised by the Examiner; 2) the amendments reduce the issues to be considered in an appeal; and/or 3) the amendments leave the application in better condition for allowance.

In this instance all possible efforts have been put forward to remove all the Examiners’ rejections to the remaining claims by canceling those that could divert from the remaining substantive issues, and to provide claims well within the ambit of the invention provided by the Applicants. The Applicant believes that the amendments which have been made, along with the nature of this response serve to put all the remaining claims in better condition for allowance. This is also true with respect to the canceled claim as well as with the claims which were amended.

Given the above, it is specifically and respectfully requested that the Examiner allow the amendments after final, made herein, and the new dependent claims added.



The Rejections Under 35 U.S.C. §112, First Paragraph

Please note that a Notice of Appeal has been filed herewith.

The Rejection Under 35 U.S.C. §103(a)

Please note that a Notice of Appeal has been filed herewith.

The Commissioner is authorized to charge any fee which may now or hereafter be due for this divisional application to GTC Biotherapeutics' Deposit Account No. 502092.

Applicants respectfully submit that the pending claims of this re-submitted Amendment are in condition for allowance, and that this case is now in condition for allowance of all pending claims. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicant's attorney would advance the prosecution of the case to finality, the Examiner is invited to telephone the undersigned at the number given below.

Early and favorable action is earnestly solicited.

Respectfully Submitted,

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